IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

Contempt Petition No. 99 of 2007
in
Writ Petition No.2642 of 2005

1. Association of Engineering
Workers and another ..Petitioners

vs.

1. Mr.Vishwas Patil
Collector and others ..Respondents

Nr.N.M,.Ganguli for petitioners.
Mr.K.R.Belosey, A.G.P. for respondent nos. 1 and 2
Ms.Shobha Ajithkumar for respondent corporation.

CORAM: S.C.DHARMADHIKARI J
22nd October,2007

P.C.

1. The contempt petition has been filed by the Association of Engineering Workers and employees of respondent no.3 Company alleging contempt on the part of respondent nos. 1 and 2 in failing to recover the dues of the workers as arrears of land revenue. It is not necessary to make a detailed reference to the recovery certificate in as much as none disputes the fact that the recovery certificate copy of which is annexed as Exhibit A is traceable to the provisions of the Payment of Gratuity Act which contemplate that the agreed amount due and payable, if not paid, is liable to be recovered as arrears of land revenue. The

petitioners approached this Court on account of inaction by respondent nos. 1 and 2 by filing writ petition no.2642 of 2005. This Court passed the following order in the said petition.

> "Petitioner Union has obtained a recovery certificate in the matter of unpaid gratuity. This was communicated to the office of respondent no.2 by communication dated 14.6.2001. Till date the amount as provided under the certificate has not been recovered.
>
> 2. On behalf of the respondent state the learned Counsel states that within eight weeks steps will be taken to effect recovery in terms of the certificate.
>
> 3. Considering the above, we direct respondent no.2 to take steps and make recovery of the dues in terms of the certificates as communicated to the office of respondent no.2 by letter dated 14.6.2005.
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> Rule made absolute accordingly. No order as to costs."

2. Mr.Ganguli for the petitioners urges that despite clear directions to the second respondent who is the Authority under the Maharashtra Land Revenue Code, he has failed to abide by the order and directions of this Court and recover the dues in terms of the certificate copy of which is annexed to the petition. The petitioners state that whatever may be the difficulties that are faced by the Authorities, nothing prevents them from proceeding to implement the orders of this Court and recover the amount in accordance with law. Their deliberate inaction is seriously prejudicing the petitioners.

3. The Naib Tahsildar in the office of Collectorate of Mumbai Suburban District has filed an affidavit and while not disputing the orders and directions of this Court, he states that attachment orders have been passed with regard to certain properties way back in August, 2002 but the Directors of the company in question are residing in Kolkatta and, therefore, the Collectorate will have to approach the authorities in Kolkatta to take further steps and recover the amount. He states that reminders after reminders have been addressed by the Collector’s office to the District

Collectorate at Kolkatta but no steps have been taken by them.

4. However, at the same time in paras 3(g) and (h) of the affidavit this is what is stated:

> 3(g) It appears that thereafter by letter dated 13.10.2006, one Sugun Krishna Pednekar informed my office for recovery of the said amount and for payment thereof and pointed out that one Mr.Darmesh Jain has agreed to purchase the property of M/s Ralliwolf Ltd. and that he has agreed to pay for and on behalf of M/s Ralliwolf Ltd. Accordingly, by letter dated 10.11.2006, my office called upon the said Mr.Dharmesh Jain to pay the said amount of Rs.72,83,208/- + 15% interest towards the labour dues, failing which the said land would be sold by auction for payment of dues of the petitioner..
>
> 3(h) Since nothing was happening in the said matter, this office learnt that the said property of Ralliwolf Ltd. falls under the "Private Forest" acquired by the State Government under the provisions of Maharashtra Private Forest Act, 1976. In

view thereof, by letter dated 17th August, 2007, this office called upon the Forest Range Officer, Mumbai to intimate whether the property can be sold for the recovery of dues towards the land arrears."

5. My attention is also invited by Mr.Belosey to the fact that it is not as if a fresh certificate cannot be issued empowering the Collectorate at Kolkotta to proceed and recover the dues from the Directors of respondent no.3, who are residing and/or working for gain within his jurisdiction. Mr.Belosey states that such a certificate would be issued within a period of four weeks from today. In the light of this statement of Mr.Belosey, the Commissioner of Labour, Mumbai/Mumbai Suburban District is directed to issue a Recovery Certificate authorising the recovery proceedings to be initiated by the District Collectorate of Kolkotta.

6. In my view nothing prevents the Bombay Suburban Collectorate from proceeding against Mr.Dharmesh Jain if he has not come forward to make payment of dues of third respondent. Further, since the property of respondent no.3 is attached, all steps to dispose of the same in accordance with law can

always be initiated and endorsement of the Forest Range Officer pertaining to the property being earmarked as a private forest notwithstanding, the same can always be taken with regard to movable and other properties.

7. In my view, the decisions of this Court on the point are clear. Time and again this Court has been emphasising the need to proceed and recover the dues or else all concerned must be liable to pay further sums. Reference can usefully be made to the decision of this Court reported in 2006(1) Bom.C.R.721 in the matter of Dilip T.Khandar Vs. State of Maharashtra and others. The Division Bench after referring to the relevant statutory provisions and decisions hiolding the field has observed as under:

> "16. A reference will have to be made to another decision of this Court dated 14th July, 1997 by a Division Bench of this Court in (Writ Petition No.783 of 19978). This was again a case where a petitioner who was holding a certificate under section 33(c) of the Industrial Disputes Act, 1947 against the National Textile Corporation approached this Court on account of non payment of long

standing dues. Paragraphs Nos. 2 to 4 of the said decision read thus:

> 2. A certificate has been issued in favour of the petitioner under section 33-C of the Industrial Disputes Act. A copy of the certificate is annexed at Exhibit A to the petition.
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> 3. National Textile Corporation the 3rd respondent herein is accordingly bound to make payment in respect of dues of the petitioner. Similarly the Central Government Union of India respondent no.4 herein is bound to release the funds in favour of 3rd respondent to enable it to make payment to the petitioner.
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> 4. In the circumstances we direct the Union of India respondent no.4 to release the necessary funds in order to ensure that the petitioner is paid his long standing dues. The payment to be made on or before 31st October, 1997 to the petitioner.

> The amount shall carry interest @ 6% p.a. from the date of recovery certificate until payment. (emphasis supplied)

> 17. It must be noted here that under section 5(2) of the said Act of 1995 the liability arising in respect of payment of wages, salaries and other dues of the employees of the Kohinoor Mills from 1st April,1994 is of the fourth respondent Union of India which is to be discharged by the fifth respondent for and on behalf of the fourth respondent. That is the reason why in the aforesaid case the Division Bench held that the funds ought to have been provided by the fourth respondent to the National Textile Corporation for payment of dues of the workers. This Court, therefore, directed payment of interest at the rate of 6 percent per annum to the petitioner herein."

8. In my view, considering the affidavit filed on behalf of respondent nos.1 and 2 pointing out therein certain steps being taken and Mr.Belosey assuring me about the completion of steps hereafter

that I am not taking any action under the Contempt of Courts Act, 1971. The Authorities were aware of their powers and steps that are required to be taken in law to recover the dues of the workers. Yet, the same have not been initiated in right earnest and with the expediency that is required in such case. The inaction as reflected requires to be strongly deprecated. However, now that the assurance has been given and directions have also been issued in pursuance thereof, it is clear that the authorities will have to take such steps.

9. Accordingly, the contempt petition stands disposed of by directing respondent nos.1 and 2 to complete recovery process and recover the dues under the subject certificate as expeditiously as possible and in any event within four months from today.

(S.C.DHARMADHIKARI J.)